

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

YANIRA DIAZ

Claimant

VS.

LIFE CARE CENTER OF WICHITA

Respondent

AND

OLD REPUBLIC INSURANCE CO.

c/o GALLAGHER BASSETT SERVICES

Insurance Carrier

Docket No. 1,013,868

ORDER

Respondent and its insurance carrier requested review of the December 23, 2005 Award by Administrative Law Judge (ALJ) Nelsonna Potts Barnes. The Board heard oral argument on April 21, 2006.

APPEARANCES

Robert R. Lee, of Wichita, Kansas, appeared for the claimant. Christopher J. McCurdy, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument, respondent advised that it no longer contests the compensability of claimant's claim. Only the nature and extent of claimant's permanent impairment is at issue.

ISSUES

After finding claimant sustained an accidental injury arising out of and in the course of her employment with respondent, the ALJ awarded claimant an 18.5 percent functional impairment to the whole body¹, a finding that reflects an average of the impairment ratings offered by Dr. Murati (on behalf of the claimant) and Dr. Mills (on behalf of the respondent).

¹ All permanent impairment ratings are to the whole body unless otherwise designated.

The respondent requests review of this decision alleging the claimant's permanent impairment should be 13 percent as opined by Dr. Mills, rather than the 18.5 percent awarded by the ALJ. According to respondent, the ALJ should not have utilized Dr. Murati's permanent impairment rating because it was so high (24 percent) as to lack credibility. Further, his impairment rating included a component for the neck, an area of the body which claimant has never complained of, nor requested treatment, at least until she saw Dr. Murati for an evaluation.

Claimant argues the Award should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed.

The ALJ's Award adequately sets forth the facts and medical testimony surrounding this claim and the Board adopts that statement as its own.

The only issue to be decided in this case is the nature and extent of claimant's permanent impairment. Highly summarized, claimant maintains that she has been diagnosed with bilateral carpal tunnel syndrome, undergone surgery to her right hand and although she has returned to work at an accommodated position, she has ongoing physical complaints and a resulting permanent impairment. Dr. Pedro Murati testified that claimant's permanent impairment is 24 percent to the whole body. This rating includes a 5 percent for myofascial pain in the cervical-thoracic area and an additional impairment for loss of range of motion in both thumbs and crepitus in her left wrist.

Respondent does not dispute the diagnosis of bilateral carpal tunnel syndrome. Rather, respondent maintains claimant suffers from an unidentified autoimmune disease which is responsible for some or all of claimant's present complaints in her hands, neck and shoulder. In support of this position, respondent offers the testimony of Dr. George Lucas, who examined claimant and concluded that her carpal tunnel condition was not caused by work. However, he went on to testify that he was unsure if her work activities aggravated her condition.² And he confirmed that claimant complained of work activities causing her symptoms to increase.

Respondent also offers the testimony of Dr. Philip Mills, the physician who was ordered to provide an independent medical examination. According to Dr. Mills, claimant bears a 13 percent permanent partial impairment as a result of her bilateral carpal tunnel complaints. The 13 percent reflects permanent impairment solely due to the bilateral carpal tunnel and includes nothing for neck complaints, crepitus or loss of range of motion. He further testified that while "she may have had some component of an underlying auto

² Lucas Depo. at 10.

immune [disease], but in my opinion, if it was causally -- if it was contributory work based on her history, work which she performed would have aggravated it.”³

The ALJ concluded that claimant’s bilateral carpal tunnel complaints were either caused by or aggravated, accelerated or intensified by her work activities. She then averaged the two ratings contained within the record and assessed 18.5 percent functional impairment.

The Board has reviewed the record and considered the parties’ arguments and finds no reason to disturb the ALJ’s findings. Although claimant was not engaging in what is normally thought to be hand intensive, repetitive work, she did, nonetheless, perform routine tasks with her hands and arms that, according to her, caused her symptoms. She was responsible for assisting with the activities of daily living for several people each day during her work shifts. No one disputes her condition and although there is some suggestion within the file that she may have an autoimmune disease of some sort, none of the physicians have definitively diagnosed her condition. Nor have any of those physicians testified that all of her complaints, including those associated with her bilateral carpal tunnel, are attributable to this alleged autoimmune disease. Instead, the greater weight of the medical testimony is that her activities likely aggravated her conditions and symptoms. The Board, therefore, affirms the ALJ’s findings in all respects.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated December 23, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge

³ Mills Depo. at 31.

Paula S. Greathouse, Workers Compensation Director